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DISTRICT III

October 24, 2023

To:

Hon. Michael T. Judge
Circuit Court Judge
Electronic Notice

Trisha LeFebre
Clerk of Circuit Court
Oconto County Courthouse
Electronic Notice

Donald V. Latorraca
Electronic Notice

Patricia Sommer
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You are hereby notified that the Court has entered the following opinion and order:

2022AP958-CR State of Wisconsin v. Aaron James Haun (L. C. No. 2019CF143)

Before Stark, P.J., Hruz and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Aaron Haun appeals from a judgment convicting him of four counts of first-degree sexual assault of a child under the age of thirteen, as a persistent repeater, and from an order denying his postconviction motion. Haun contends that the circuit court erroneously exercised its discretion by admitting other-acts evidence at Haun's trial. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

As a general matter, evidence of "other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith." WIS. STAT. § 904.04(2)(a). Nonetheless, other-acts evidence may be admitted to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident that reduces the possibility that the charged conduct was innocent. ***Id.*** Such evidence still must be relevant under WIS. STAT. §§ 904.01 and 904.02, in that it relates to a fact or proposition of consequence to the determination of the action, and its probative value must not be substantially outweighed by the danger of unfair prejudice or confusion of issues under WIS. STAT. § 904.03. ***State v. Sullivan***, 216 Wis. 2d 768, 785-89, 576 N.W.2d 30 (1998).

Wisconsin courts apply a "greater latitude rule" that permits other-acts evidence to be admitted more liberally under the ***Sullivan*** test in sexual assault cases—particularly those involving children. ***State v. Marinez***, 2011 WI 12, ¶20, 331 Wis. 2d 568, 797 N.W.2d 399. Pursuant to WIS. STAT. § 904.04(2)(b), "evidence of any similar acts by the accused is admissible" in criminal proceedings alleging defined sexual assault offenses.

We review the circuit court's admission of other-acts evidence under the erroneous exercise of discretion standard. ***Sullivan***, 216 Wis. 2d at 780. A court properly exercises discretion when it considers the facts of record under the proper legal standard and reasons its way to a rational conclusion. ***Id.***

Here, the complaint alleged that, over a period of several months in 2019, Haun had sexual contact with an eleven-year-old girl named Nancy[2] and Nancy's ten-year-old sister, Mary. The allegations included incidents in which: (1) Haun held Nancy down while they were lying on a couch watching a movie, slid his hand inside Nancy's pants and underwear, and touched her vagina before she was able to get away; (2) Haun entered the sisters' bedroom during the middle of the night wearing only his underwear, woke Nancy up in her bed, touched Nancy's breasts and buttocks, positioned himself to touch Nancy's vagina with his penis through his underwear, and told Nancy to spread her legs, before both girls told him to stop; (3) Haun entered the sisters' bedroom at night, got into bed with Mary, and rubbed and squeezed Mary's vagina, buttocks, and breasts with his hands until she told him to stop; and (4) Haun entered the sisters' bedroom at night wearing only his underwear, touched Mary's breasts, vagina and buttocks with his hand under her clothing, and rubbed his penis on Mary's vagina through his underwear.

Prior to trial, the State moved to admit other-acts evidence that Haun had been convicted in 2005 in an Illinois case of two counts of aggravated criminal sexual abuse of a thirteen-year-old child, Beth. The Illinois case involved incidents in which: (1) Haun put his head in Beth's lap while they were watching a movie, then kissed her on the mouth; and (2) Haun took Beth into his bedroom on two consecutive nights, where he kissed her, put his hand down the back of her pants and attempted to touch her buttocks while she tried to get him to stop, pulled her shirt off and fondled her breasts, and placed her hand on his erect penis over his underwear. Haun admitted to police that he had taken Beth into his bedroom around midnight wearing only his

[2] Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we will use pseudonyms for the names of the victims in this matter and in Haun's prior Illinois case.

underwear and that he had fondled her breasts and attempted to touch her buttocks for the purposes of sexual stimulation.

Haun acknowledged at a hearing on the State's motion that his prior conduct was "very similar" to the allegations in this case and could be relevant to his motive. Nonetheless, Haun opposed the admission of the other-acts evidence on the grounds that the prior conduct was remote in time and would be "overwhelmingly prejudicial."

The circuit court granted the State's motion to admit the other-acts evidence. While acknowledging that the Illinois conviction was fifteen years old, the court noted that the evidence still would be relevant and probative given the striking similarity between the past conduct and allegations in this case. The court also acknowledged that while the evidence would be prejudicial to some degree, the evidence should nonetheless be admitted, taking into account the greater latitude rule.

Haun renewed his objection to the other-acts evidence several months later, this time challenging the similarity of the prior conduct to the current allegations and arguing that the evidence was being offered for the impermissible and prejudicial purpose of showing that Haun had acted in conformity with his prior conduct. In response, the circuit court noted that both the prior and current incidents involved groping young girls at night during which Haun was wearing only his underwear, and it again cited the greater latitude rule in support of its rejection of Haun's prejudice argument.

Haun raised the issue of other-acts evidence for a third time in a postconviction motion, again arguing that his prior conduct was dissimilar from the allegations in this case and that the prejudicial effect of his prior convictions outweighed their probative value. In addition, he

claimed that the other-acts evidence "swallowed up the trial" in this case because the State introduced the evidence through lengthy testimony from Beth and her mother. The circuit court denied the postconviction motion, reiterating its prior reasoning.

In this appeal, Haun argues that the circuit court erroneously exercised its discretion by allowing the admission of the other acts-evidence because: (1) exceptions have "swallowed" the rule as to other-acts evidence; (2) the groping allegations were "common to virtually every sexual assault of a young girl" and did not involve any "unusual sexual practice" that would set them apart from hundreds of other sexual assaults; and (3) the State introduced the evidence through the lengthy testimony of Beth and her mother, rather than the mere fact of the conviction. None of these arguments persuade us that the circuit court erroneously exercised its discretion by allowing the evidence to be admitted.

Haun's first argument appears to be an invitation for this court to overrule the greater latitude rule announced in ***Marinez*** and codified in WIS. STAT. § 904.04(2)(b). We have no authority to do so. This court is bound by the precedent of the Wisconsin Supreme Court, unless it is in conflict with a subsequent decision of the United States Supreme Court on a question of federal law. ***State v. Harvey***, 2022 WI App 60, ¶44, 405 Wis. 2d 332, 983 N.W.2d 700. Moreover, Haun has presented no challenge to the constitutionality of § 904.04(2)(b).

Haun's second argument is misplaced because the State did not introduce the other-acts evidence to show identity based upon a distinct modus operandi. Rather, the State introduced the evidence to show that Haun's motive and intent was to achieve sexual gratification. That is a permissible purpose. *See* ***State v. Dorsey***, 2018 WI 10, ¶42, 379 Wis. 2d 386, 906 N.W.2d 158.

Moreover, similarities between a defendant's prior acts and the charged offense strengthen the probative value of the evidence regarding motive, intent, plan, and lack of mistake—especially as to the relative credibility of the defendant's and accuser's differing versions of events. ***Id.***, ¶¶48-50. There were numerous similarities between the prior conduct and charged offenses here, including: the age ranges of the victims; the fact that Haun had some type of relationship with each of the victims' mothers; the incidents all occurring at night when others were sleeping; and Haun wearing only underwear in several incidents. Whether or not the groping conduct attributed to Haun may be common in other sexual assault cases in no way negates its relevance as to motive and intent here.

As to Haun's third argument, Haun cites no authority that would limit the manner in which the State could introduce the other-acts evidence. Beth and her mother were plainly in the best position to describe what Haun had done to Beth. To the extent Haun is arguing that the manner in which the evidence came in magnified its prejudicial value, that argument would go to the balancing of the factors, within the circuit court's discretion.

In sum, although Haun cites the correct standard of review, he does not come to terms with that standard. The record shows that the circuit court repeatedly applied the proper legal standard (i.e., the ***Sullivan*** test and the associated greater latitude rule) to the facts of record (i.e., the conduct underlying the 2005 Illinois convictions and the allegations underlying the charges in this case). Haun does not contend that the court made any misstatements regarding either the applicable law or the relevant facts. Haun essentially challenges the court's conclusion that the prejudicial effect of the other-acts evidence did not substantially outweigh its probative value by disagreeing with the court's view of both the probative value and prejudicial effect of the

evidence. Haun has not shown that the court's decision was irrational, however, in either respect.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals